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ABSTRACT

Designed to assist New Jersey school districts in developing and implementing student codes of conduct, this document begins by examining the need for policy and clearly established rules, the rationale for codes of conduct, and the areas that such codes should address. Following a discussion of substantive and procedural rights and sources of school law, students' specific rights and responsibilities are detailed. A section on student rights and procedures regarding disciplinary sanctions includes information on due process; suspensions and expulsions; lowering grades and denial of credit; corporal punishment; and other sanctions. Issues commonly raised regarding student behavior outside of school and the punishment of handicapped students and of 18-year-olds are addressed, and concerns such as police in schools, drug and alcohol abuse, and child abuse that are shared by schools and outside agencies are examined. A brief section on grievances and appeals concludes that each district must develop a process that is effective in light of its own needs. The final section provides an explanation of a code development process that outlines achieving broad based participation; steps in developing and drafting a code; and distribution of the code. The State Board of Education Resolution, information on finding legal cases, and a feedback form are appended. (12 references) (CLA)

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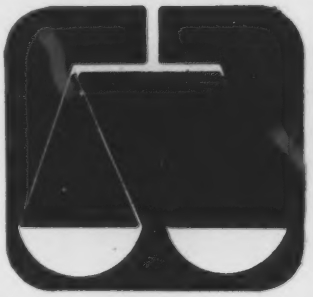

Student Codes of Conduct:

A Guide to Policy Review and Code Development

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STUDENT CODES OF CONDUCT:
A GUIDE TO POLICY REVIEW AND CODE DEVELOPMENT

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Commissioner of Education

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New Jersey State Department of Education
225 West State Street
Trenton, New Jersey 08625

September, 1985

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COMMISSIONER'S FOREWORD

The national surveys of the public's attitude toward education have continually cited discipline as a major problem. Gallup polls report that much criticism of the schools stems from parent and community views that see schools as unsafe due to discipline problems. According to a recent Harris poll, 95 percent of teachers would give a higher priority to school discipline and safety than currently exists.

New Jersey educators, students, and the public also report discipline as a major problem facing public schools. In September, 1980, the State Board of Education adopted a resolution encouraging district boards of education to develop a policy of parent, staff and student rights and responsibilities as well as codes of conduct. Governor Kean underscored this concern in his address, A Blueprint for Reform, before a joint session of the legislature in 1983. I also expressed my concern for a well-disciplined orderly school in an annual message to the state's to the state's chief school administrators. In addition, several national reports and studies have identified the maintenance of discipline and development of codes of conduct as important factors for improving education.

The New Jersey Department of Education has already taken the initiative of developing materials, training and grant opportunities to address this problem. These activities support efforts to remove chronically disruptive students from the regular school environment and provide them with alternative educational opportunities.

In addition to removing disruptive students from the regular setting, educators can take steps to prevent the amount of disruption in a school. One measure includes having an easily understandable, fair, and widely disseminated code of conduct. The initial step in having an orderly school is to make sure that the rules which govern the behavior of students and outline the responsibilities of the staff and parents are clearly understood. We must define the behaviors we will not tolerate and back our policies and codes with firm action. We have prepared this guide to assist districts in developing and implementing such codes of conduct.

This document is one of several produced by the New Jersey Department of Education in response to the need to improve discipline in the New Jersey public schools. Other documents published by the New Jersey Department of Education related to this topic include:

- Alternative Education Programs for Disruptive Students, June 1984;
- A manual for the Development of Classroom Management Skills, Spring, 1985;
- A Grant Program to Reduce Student Disruption in Schools, June, 1985; and
- Identifying and Fostering Positive Student Behaviors, December, 1985.

Interested school districts can receive additional information and training on this and related topics at the Regional Curriculum Service Units (RCSU).

Saul Cooperman
Commissioner

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The department acknowledges the following staff for their assistance with this document: Dr. Thomas J. Rubino, who developed the content outline and served as the principal writer and editor in the preparation of the document; Dr. Jacqueline Cusack, Manager, Bureau of Student Behavior and Development, who supervised the development of the document; members of the project team, including Gail Hecht of RCSU-N, Brenda Grier of RCSU-C, John Khanlian of RCSU-S, Dr. Stanley Rabinowitz of the Division of General Academic Education, Dr. Carol West of the Division of Bilingual/Compensatory Education, Dr. Ken Silvestri of the Essex County Office of Education; and Dr. Seymour Weiss, Office of Controversies and Disputes.

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TABLE OF CONTENTS

CHAPTER		PAGE
I.	INTRODUCTION	1
II.	NEED FOR POLICY AND CLEARLY ESTABLISHED RULES	4
III.	WHY HAVE CODES OF CONDUCT?	6
IV.	WHAT AREAS SHOULD A CODE OF CONDUCT ADDRESS?	9
V.	STUDENT RIGHTS AND RESPONSIBILITIES	11
	A. Students' Substantive and Procedural Rights	13
	B. Sources of School Law	14
	C. Specific Rights and Responsibilities	16
	1. The Right to Public Education	16
	2. Equal Rights	18
	3. First Amendment Rights	19
	a. Individual Speech	22
	b. Symbolic Expression	23
	c. Student Clubs and Associations	23
	d. Assembly and Petition	23
	e. Salute to the Flag and Pledge of Allegiance.	24
	f. School Prayer	25
	g. Preparation and Distribution of Literature .	26
	h. Personal Appearance - Hair and Dress	28
	4. Marriage, Pregnancy and Parenthood	29
	5. Pupil Records	31
	a. Access	32
	b. Confidentiality	34
	c. Content	34
	6. Violence and Vandalism	35
	7. Search and Seizure	36
VI.	DISCIPLINARY SANCTIONS	42
	A. Due Process	42
	1. The Right to a Hearing	42
	2. Matching Consequences to Infractions	43
	B. Suspensions and Expulsions	43
	1. Reasons for Which a Student May be Suspended or Expelled	44
	2. Short and Long Term Suspensions	45
	a. Short-Term Suspensions	45
	b. Long-Term Suspension or Expulsion	47
	c. Reporting of Suspensions	49
	d. Consideration of Alternatives	49
	e. Appeals	50
	C. Lowering of Grades and Denial of Credit	51
	D. Corporal Punishment	54
	E. Other Sanctions	55

PAGE

VII. SPECIALIZED DISCIPLINARY ISSUES 56

A. Behavior Outside of School 56
B. The Push-Out Problem 57
C. Discipline for Handicapped Students 58
D. Eighteen-Year-Olds 61

VIII. SHARED CONCERNS FOR SCHOOLS AND OTHER AGENCIES 63

A. Child Abuse 63
B. Drug and Alcohol Abuse 64
C. Police in the Schools 64

IX. GRIEVANCES AND APPEALS 66

X. THE PROCESS FOR DEVELOPMENT OF THE CODES 67

A. Achieving Broad Based Participation 67
B. Steps in Developing a Code 69
1. Formation of a Local Representative Committee ... 69
2. Undertaking a Needs Analysis 70
C. Drafting the Code 71
1. Mechanism for Resolving Disputes 71
2. Actual Drafting 72
3. Setting a Timetable 73
4. The Importance of a Final Review 73

D. Distribution of the Codes 73

END NOTES 75

REFERENCES 81

APPENDICES 82

A. State Board of Education Resolution 83
B. How to Find Legal Cases 84

FEEDBACK FORM 86

I. INTRODUCTION

In recent years, increased attention has been focused on the rights and responsibilities of students in the public schools. The social movements of the last two decades gave rise to the view that the school should be an important model of democratic society; that is, a place where students not only learn about the rights and responsibilities of citizenship, but where they also gain valuable experience in appropriately exercising them.

Unfortunately, over the same years there has been a growing problem of disorder in the schools. Extensive media attention and the frequency with which the matter is discussed among people in everyday life make one inescapably aware of the dimensions of and the concern over this problem. Each year millions of dollars are spent on increasing security and replacing stolen or damaged school property. A disorderly environment also results in immeasurable and less tangible long-term costs to the schools. It is important to strike a balance between students' rights and their responsibility to contribute to the maintenance of a school environment which is conducive to learning.

New Jersey educators and parents have expressed concern about interruptions in the school day caused by disruptive students. In response, the New Jersey State Department of Education has prepared materials and presented training and grant opportunities to: 1) support

efforts to remove disruptive students from the classroom and provide them with alternative educational programs; 2) identify expectations for student behavior; 3) increase teacher effectiveness in classroom management; and with this publication, to 4) help districts develop and implement codes of conduct. This multi-faceted approach to the problem reflects current research which indicates that removing disruptive students from the regular setting, providing for well-managed classrooms, stating expectations and implementing clear, fair and widely disseminated codes of conduct all contribute positively towards decreasing disruption in schools.

The New Jersey State Department of Education, through this guide and related documents published under the student behavior/discipline initiative, has attempted to identify the best information and practices about how to reduce student disruption. The document presents a set of guiding principles to help local school district personnel develop sound policy and effective codes of conduct. Such policy and codes of conduct should be primarily focused on student behavior as it is related to reduction in school disorder and property damage. Student rights should be taken into account in the development of a code of acceptable conduct, with emphasis on the preservation of a school and classroom environment that is conducive to learning. Codes of conduct should clearly prohibit physical violence of any type in the schools, disruption of the delivery of education in the classrooms and on school property, the violation of any law, and the destruction of school property or the property of others. They should also describe the penalities which will follow when unacceptable behavior occurs.

Sections I through IV provide the background that gave impetus to this project. The rationale and need for clearly understood rules of student conduct are also discussed. Sections V through IX outline the legal framework that support codes of conduct and form the basis for the concepts and principles enunciated in law and court decisions. Section X focuses on the process for developing student codes of conduct at the local school district level.

The format chosen to present the legal information included in this guide is intended to provide clarity and facilitate reading. Accordingly, the footnotes and most of the legal references and citations are listed in an "end note" section of the document, rather than being included with the narrative. In addition, certain sections are labeled COMMENT in Chapters V through IX to distinguish them from the substantive, legal statements presented.

II. NEED FOR POLICY AND CLEARLY ESTABLISHED RULES

In 1978, the Commissioner of Education appointed a task force to study and make specific recommendations to address the problem of disruption in the public schools. In its report to the State Board of Education, the task force concluded that having rules of student conduct which are clearly understood is the first step to having orderly and effective schools.

On September 3, 1980, the State Board of Education adopted a resolution encouraging district boards of education in New Jersey to develop a written policy with respect to student rights and responsibilities and to develop student codes of conduct (see Appendix A). The resolution reflects the belief of the board that having clearly defined and understood rules of student conduct is critical to achieving the goal of more effective schools. In urging that the codes be developed with broad participation by staff, parents and students, the resolution reflects the view of the board, confirmed by many studies, that when policies are developed with input from those who are directly affected by them, those policies receive more support.

Many school districts in New Jersey have developed written policies and codes of student conduct.[1] Some districts, however, still do not have a comprehensive set of policies. Others may have policies which are outdated or fragmented. The State Board of Education resolution and this guide are intended to assist local school districts in:

- reviewing, developing and/or revising the policies and system of school rules which govern the behavior of students, and clearly stating the staff and parental responsibilities in enforcing them; and

- achieving the desired climate and cooperation between the school and the community in which to develop and disseminate student codes of conduct.

III. WHY HAVE CODES OF CONDUCT?

Every society needs to adopt rules to assure orderly human activity and to establish institutions that prepare young people for entry into the adult world. In American society, both a general power to promote the public welfare and the responsibility for establishing a public education system to train young citizens are functions of the states rather than the federal government. Thus, those administering the educational system have a responsibility for the related goals of:

- ensuring that schools perform their educational function;
- maintaining an orderly environment conducive to learning; and
- providing for the safety and welfare of the school population.

On the other hand, students, as citizens of this country, are guaranteed certain rights, for example:

- to express their personal and political opinions through speech and other modes of expression;
- to privacy in the conduct of certain aspects of their own affairs;

- to be heard and to have fair and consistent rules; and

- to due process procedures.

These student rights are accompanied by responsibilities such as their responsibilities to:

- attend school and classes regularly;

- respect school property; and

- refrain from conduct that disrupts or threatens to disrupt the learning of other students.

Rights and responsibilities are not always easy to balance. It is not always clear to students what their specific rights and responsibilities are with respect to behavior in the school environment. This uncertainty can sometimes lead to unfortunate consequences. For example, students may engage in certain prohibited behavior, not with the desire to intentionally violate institutional rules, but because the behavior was not known to be prohibited. Also, where rules have been violated, disciplinary standards or procedures enunciated after the fact are more likely to be perceived as unfair or unreasonable. In some instances, lack of clarity about the rules and the procedures for their enforcement may result in unnecessary legal challenges being brought by students and their parents.

The State Board of Education believes that the use of student codes of conduct can go far in avoiding some of these problems. By making it clear what conduct is permitted and what is prohibited, students, parents and school personnel can be aware of precisely what is expected in the area of student behavior. One of the basic considerations offered by the board that should characterize the preparation of effective school codes is that:

> ...School administrators should enthusiastically support the involvement of students in developing the codes as a legitimate educational experience. Involving students in the rule-making and decision-making process is likely to be more effective than even the most eloquently stated code unilaterally imposed on students by school officials [2]

Also, by specifying the procedures for determining whether a student is guilty of an infraction of a rule and for determining the appropriate disciplinary sanction when a violation has taken place, it is more likely that a fair, consistent and orderly process will be used to enforce disciplinary rules.

The development and implementation of codes of student conduct can also provide students with an important additional learning experience. In understanding and abiding by the rules of the school community, students begin to prepare themselves for their participation as citizens in the larger society. Participation by students in the development of the codes, in a climate of mutual respect and trust, can help them develop positive attitudes toward democratic processes, public institutions, group participation and civic life in general.

IV. WHAT AREAS SHOULD A CODE OF CONDUCT ADDRESS?

Although there is no single answer to the question of what a code of student conduct should include, there are some elements that are essential. First, as stated by the state board in the 1980 resolution, the code should cover the "rights and responsibilities of pupils with respect to all school related activities, including school-sponsored functions or functions at other schools involving approved activities." A code of conduct should specify:

- what is considered to be acceptable behavior and unacceptable behavior;
- what the procedures are for determining whether there has been a violation of a rule; and
- what the consequences are for such violations.

No code of conduct can be expected to meet the needs of all school communities, and each community must develop rules that to some extent reflect its own values, concerns and needs. However, all codes should inform students of:

- certain basic rights, such as the right to a public education;

- the right to equal opportunity and rights in areas such as free expression, marriage and parenthood, student records and search and seizure;

- the responsibility to respect school property and refrain from violent or disruptive behavior;

- the due process guarantees that are applicable whenever they are subject to serious disciplinary penalties such as suspension and expulsion; and

- the responsibility to participate in the learning process.

This guide will discuss student rights and responsibilities in these and other areas. Each local school district code may discuss the areas included in this guide as community needs require, but every code should ensure that the coverage given provides a full and balanced picture of student rights and responsibilities in the particular school's context.

V. STUDENT RIGHTS AND RESPONSIBILITIES

The laws that define student rights and responsibilities reflect the interplay of the multiple roles of a student in the community. These roles acknowledge that:

- a student is a citizen of the United States and is entitled to certain rights by virtue of that status -- to due process, to the equal protection of the laws and to free speech and expression as guaranteed by the First Amendment to the United States Constitution;

- a student is also a member of a family and in most cases is still a minor. As minors, most students are still subject to the control of their parents with respect to many aspects of their lives since, under the law, parents have a general right to direct the upbringing of their children;

- a student is a member of the school community.

The school has an obligation to the larger society to educate young people to assume the responsibilities of adult life. In order to fulfill its tasks, the school has a general power to make reasonable rules designed to promote an atmosphere where learning can take place effectively and to discipline students in a reasonable manner when those rules are violated. The school is said to act "in loco parentis," that is, in the place of the parent with respect to the

supervision of students' education and conduct while they are in school. This authority extends to school-sponsored functions and functions at other schools involving approved activities.

Some conflicts that arise in the area of student behavior occur when the different aspects of a student's status come into conflict in the school setting. For example, incidents may arise that directly pit the student's First Amendment rights against the right and duty of the school to maintain the order and discipline necessary to an effective learning environment. Parents and school personnel may disagree on the content of information maintained in a student's personnel record, on the question of whether a student is appropriately dressed for school, or on the reasonableness of a punishment to which a student has been subjected. Other issues in school law arise out of relationships and legal obligations that schools may have to external agencies such as law enforcement or health and social services agencies which also have responsibilities for young people.

School personnel and local administrators should be aware that a substantial body of state and federal law addresses the rights and responsibilities of students, parents and schools with respect to student conduct. In drafting codes of conduct, this law should be consulted and understood to ensure that the code which is developed comports with applicable law in addition to state educational policy objectives.

A. Students' Substantive and Procedural Rights

Before providing more detail about the specific rights and responsibilities of students relevant to conduct, it is important to understand that students basically have two kinds of rights. These rights are, first, substantive rights, and secondly, procedural rights.

Substantive rights define the specific types of conduct or behavior in which students have a right to engage. They also define what students have a right to be free from. For example, students have a substantive right to free speech and free expression, and to be free from illegal discrimination based on race, religion or ethnic origin. In New Jersey, students have a substantive right to attend school until the age of 20.

Procedural rights in the school setting specify the procedures or particular steps that must be followed before certain actions can be taken against a student. These procedural rights will be discussed in more detail in the part of this guide dealing with disciplinary sanctions. Here, however, it must be noted that the due process clause of the Fourteenth Amendment to the United States Constitution requires that before any person can be deprived of an important right or punished for having violated a rule or law, three factors must be present: (1) the individual must have notice of what is about to happen; (2) he or she must be given an opportunity to be heard; and (3) the hearing that takes place must be conducted fairly.

Students must be afforded these same due process rights before serious punishments can be imposed upon them by school officials.

B. Sources of School Law

It is also important to understand that there are several kinds of law that are relevant to student rights and responsibilities. These are constitutions, statutes, court decisions and administrative rules and regulations.

Constitutions define the basic structure of a government and define certain rights that all citizens have. They are broadly worded because they are intended to apply to changing circumstances over a long period of time. Courts interpret constitutions in light of new problems and situations.

Statutes are laws passed by Congress or by state legislatures to apply to a particular area of concern. State statutes deal with particular functions of state government. For example, each state has a statute that prescribes how the public schools will be operated. In New Jersey, the statutes that relate to education are contained in Title 18A.

Courts decide disputes between specific parties. In so doing they also establish certain rules, which the law calls precedents, that will be followed when similar cases arise. Where there is a conflict between federal law and state law, federal law governs. However, in

circumstances where state law provides more specificity on a subject than the federal law does, the provisions of the state law would apply as long as they do not conflict with the federal law. The United States Supreme Court may review and reverse the decision of the highest court in a state where an issue of federal law is involved. Another major source of education law in New Jersey is provided by the Commissioner of Education's quasi-judicial jurisdiction to hear and decide controversies and disputes arising under school statutes and rules of the State Board of Education.

In addition, administrative rules and regulations are issued by federal and state administrative agencies. These agencies have the authority by law to regulate certain activities such as health or education, and they issue rules and regulations to help them carry out those tasks.

In New Jersey, the administrative code is divided into a series of titles that correspond to an executive department of state government and contain the effective rules of that department. The rules and regulations that govern education in New Jersey are contained in Title 6 of the Administrative Code.

Administrative agencies also sometimes hold hearings on disputes involving matters within their powers. Any decisions they render must be in accord with applicable federal and state law, including court decisions. As indicated above, the New Jersey Commissioner of Education has been conferred with quasi-judicial authority to render decisions in school related matters.

To assist the reader who wishes to obtain additional information about the court cases cited in this guide, Appendix B has been included to explain the reference letter and number system used in listing a given title.

C. Specific Rights and Responsibilities

1. The Right to Public Education

A major principle that school districts should bear in mind in developing codes of student conduct is that by law the state of New Jersey guarantees the right to a free public education.

The Constitution of the State of New Jersey requires that free public schools be provided for all New Jersey residents between the ages of five and eighteen.[3] The compulsory education laws of New Jersey also restrict the "temporary or permanent exclusion from school by the board of education of any district of any child between the ages of five and 20, except as explicitly otherwise provided by law."[4]

The New Jersey Supreme Court said that the state has an obligation to provide students with a "thorough and efficient education."[5] Similarly, the laws of New Jersey require that students in the school system must be given an education that enables them to learn to function politically, economically and socially in a democratic society[6]. This does not simply mean

that regular classroom instruction must be provided. Rather, the law also requires that the school system provide programs and support services for pupils, develop state and local evaluation and monitoring programs and encourage public involvement in establishing educational goals.[7]

Both parents and school officials have an obligation to see that students of school age actually attend school. The compulsory education laws of New Jersey hold the parents or guardians responsible for regular attendance for children between the ages of six and sixteen[8]. The Commissioner of Education has said that school officials also have an obligation to see that all students attend school until the age of sixteen[9].

Regular attendance at school is a fundamental prerequisite to enable students to benefit from the provision of free public education.

COMMENT

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Therefore, the codes of student conduct developed in each district should address the responsibilities of students to attend school and to attend classes, making clear the possible immediate penalties and long term consequences of excessive absenses, truancy, cutting classes and tardiness.

* * * * * *

2. Equal Rights

Codes of student conduct should clearly state that every student has a right not to be discriminated against on the basis of race, religious, or ethnic background in relation to any school matter -- whether it involves academic, extracurricular or disciplinary procedures or penalties. Racial segregation in American schools has been illegal since 1954 when the United States Supreme Court ruled that segregated schools violated the equal protection clause of the Fourteenth Amendment of the United States Constitution[10]. Denial of access to attend a public school because of a person's color has been prohibited in New Jersey since 1881. Segregation in the public schools was specifically prohibited in Article I, Section 5 of the New Jersey Constitution in 1947. Later civil rights cases have gone far to ensure equal opportunity for all races and religious and ethnic groups in all aspects of the educational experience.

Federal law also prohibits discrimination on the basis of sex in any educational program or activity that is receiving federal financial assistance[11]. Moreover, treating students differently on the basis of sex may deny equal protection of the law under the Fourteenth Amendment to the United States Constitution. Federal administrative regulations contain guidelines to assist schools in ensuring that certain programs such as those involving physical education and athletics are in compliance with federal law[12].

In addition to the federal laws, New Jersey prohibits discrimination on the basis of race, color, creed, sex or national origin in the public schools[13].

COMMENT

* * * * * *

It must be recognized that discrimination can occur in many forms -- some overt and some subtle. Codes of student conduct should advise any student who believes that he or she has been discriminated against because of race, religion, ethnic background, sex or gender, to immediately bring the problem to the attention of the appropriate school official. Moreover, students should also be advised of their options to seek advice from community organizations or from an attorney.

* * * * * *

3. First Amendment Rights

Students, as citizens of the United States, are guaranteed a right under the First Amendment to the Constitution to free speech and expression; however, this right is not absolute. For example, no minor or adult has a right to engage in speech or expression that creates a clear and present danger of bringing about evils that the government has a right to prevent. Thus, as the United States Supreme Court has said, the most stringent protection of free speech would not protect a person falsely shouting fire in a theater and causing a panic,[14] or saying words that by their very utterance tend to incite an immediate breach of the peace.[15] Aside from this kind of "clear and present" danger prohibition, which, of course, must be applied to the specifics of a particular case, all citizens have a First Amendment right to express their views on any subject.

In applying the right of free speech to the school setting, the courts in Tinker v. Des Moines Independent Community School District have permitted school officials to place limitations on student's rights to free speech and expression only where such limitations are necessary to prevent a material and substantial disruption to maintaining the discipline necessary for the operation of the school.[16] This is an extremely important case for two reasons. First, the standard that the Court set in that case to determine the right of students to free speech and expression applies to all schools in the country. Secondly, the rule established by the Court applies not only to the wearing of armbands, but also to many other possible forms of speech and expression in which students might wish to engage.

In Tinker, the students who wore black armbands to protest the Vietnam War were suspended by the school. In finding that the suspension was improper, the United States Supreme Court held that the prohibition against wearing the armbands violated the students' right to free speech and that the students had a constitutional right to wear the armbands as a form of symbolic speech. The court said specifically that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" and set forth a standard that a school must meet in order to curtail a student's rights in this area.

The court said that:

> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show more than a mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint. Certainly where there is no finding and no showing that the exercise of the forbidden right would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school' the prohibition cannot be sustained.

The Supreme Court thus made it clear that students cannot be forbidden from peacefully expressing their views simply because those views are controversial or make other students upset, angry or hostile. To prohibit a particular form of expression, school officials must be able to show that the kind of disruption that would occur would be a real threat to the operation of the school.

In Tinker, the Court specifically noted that the wearing of the armbands in that particular school did not have the effect of disrupting the school's operation. It indicated, however, that insignia worn by students could be barred where school officials could show that they did have that effect. There are several cases where bans of signs or insignia were upheld because they did cause substantial disruption. For example, a federal court upheld a prohibition against the wearing of an emblem depicting the confederate flag where, during the previous year, the symbol had been the source of a level of disorder among students which

required the school to be closed on two occasions.[17] Also, a ban on antiwar armbands was upheld where more than one-eighth of the students in the school were children of military personnel and the armbands incited chanting, marches, and threats of violence among diverse student factions.[18] The New Jersey Commissioner of Education also upheld suspensions arising out of the distribution of leaflets and the wearing of a single black glove, in a school where there had been growing racial tension in the student body and specific threats and incidents of violence.[19] On the other hand, where it was undisputed that the wearing of black arm bands had caused no substantial disruption, the court invalidated the school's ban.[20]

a. Individual Speech

Subject to the limitations just discussed, students have a right to freely express their views on any subject whether it relates to national issues or policies at the school. The school, which has the responsibility to maintain a level of order and discipline that will enable it to carry out its function, may reasonably regulate the time, place, manner and duration of speech, as long as it does not do so for the purpose of censoring ideas or stifling expression.[21] School officials can punish speech that is accompanied by physical conduct of a disruptive nature.[22]

b. Symbolic Expression

As was made clear by the Supreme Court in the Tinker case, students have a right to wear or display buttons, armbands, flags, decals or other badges of symbolic expression, unless the manner of expression "materially and substantially interferes with the orderly process of the school or the rights of others."

c. Student Clubs and Associations

Students have a constitutional right to organize and join groups to pursue common interests and purposes. In the past, such groups have often taken the form of clubs, fraternities, sororities or secret societies. Most courts are in agreement that student clubs and associations may be prohibited where they materially disrupt the orderly operation of the school.[23] The school's obligation to protect the interests of all of its students and to prevent discrimination against any student on the basis of race, religion, ethnicity or sex can outweigh students' associational interests in forming and joining clubs that are secret or discrminatory.

d. Assembly and Petition

Students have a right to assemble peacefully and to circulate petitions. This right carries with it the

responsibility to respect the orderly operation of the school. Again, the test set forth by the Supreme Court in Tinker applies -- the issue is whether the activity engaged in materially and substantially disrupts school activity. Although a peaceful demonstration cannot be totally prohibited on the school premises, school officials have a right to reasonably regulate the times and places of such activities.[24] Federal courts have held students' demonstrations such as rallies, walking out of class and sit-ins to be impermissible and subject to punishment where they were found to be materially disruptive.[25]

e. Salute to the Flag and Pledge of Allegiance

The United States Supreme Court ruled that a school board could not compel students to salute and pledge allegiance to the American flag.[26] Although New Jersey law requires that all schools conduct the pledge of allegiance and flag salute exercise each school day, the law, as it must, exempts from that exercise students who have "conscientious scruples against such pledge or salute."[27] These students are not required to stand while the pledge of allegiance is being given by others.[28]

f. School Prayer

The Supreme Court of the United States has held that state officials cannot compose an official state prayer and require that it be recited in public school at the beginning of each school day. Such official ceremonies where prayers are recited or passages from the Bible are read are not permitted even where the prayer is nondenominational, participation is voluntary, and where students can be excused from attending the exercise.[29] Thus, any school board or school rule or policy that prescribes Bible reading or prayer ceremonies is unconstitutional.

The Supreme Court recently struck down, as unconstitutional, an Alabama law that permitted a one-minute period of silence in all public schools "for meditation or voluntary prayer." The court found that the law was motivated by a legislative purpose to endorse religion and had no secular purpose. The court emphasized the established principle that the government must pursue a course of complete neutrality with respect to religion. A similar statute in New Jersey, permitting students to participate in a one-minute period of voluntary silence to be used in the discretion of the individual student, had already been declared unconstitutional by the federal court in New Jersey.[30]

g. Preparation and Distribution of Literature

The preparation, publication and distribution of newspapers, magazines and other literature is an exercise of freedom of the press. Student literature has constitutional protection regardless of its authorship.[31] Here too, the standard established by the Supreme Court in Tinker v. Des Moines Independent School District applies.

COMMENT

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School officials do not have a general right to control the content of student publications. A publication cannot be banned because it criticizes school officials or policies. This is true even if the school sponsors and pays for the publication. School authorities may reasonably control the time, place and manner of the distribution of literature on the school premises to maintain order and safety, but they cannot do this for the purpose of censoring the content of the literature.[32]

The content of literature produced or distributed can be censored only if school officials can show that the content creates a substantial threat of school disruption.

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However, the federal courts are not in agreement as to whether school officials can exercise prior restraints with respect to this material.[33] School officials cannot restrict circulation on school property to literature prepared under school sponsorship and supervision.[34] Students have a right to distribute publications next to school property subject to the same rule governing other

citizens' right to distribute literature on public property (they cannot block pedestrian traffic or entrances to buildings). New Jersey law prohibits the distribution on school property of partisan political literature supporting or opposing candidates or public questions in any general, municipal or school election.[35]

Although, as has just been discussed, students have broad constitutional rights with respect to literature that they may wish to publish or distribute at school, it should be pointed out that obscenity is not speech protected by the First Amendment, and obscene published matter may be banned by the school.[36] Obscenity, however, does not simply mean crude or vulgar language. United States Supreme Court decisions define obscenity in terms of literature about sex that appeals to prurient or shameful interests, patently offends community standards and that taken as a whole, lacks serious literary, artistic, political or scientific value. It should also be noted and pointed out to students that the First Amendment does not protect libelous material. Libelous material is false information about a person that is damaging to the person's reputation in his or her personal or business life. Publication of libelous material may result in a lawsuit by the person who has been libeled.

COMMENT

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In drafting codes of conduct, students should be advised of their broad rights of freedom of expression, but it should be emphasized that this freedom is accompanied by responsibility for the published statement.

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h. Personal Appearance - Hair and Dress

Although issues concerning the dress and general personal appearance of students do not arise as frequently today as they did in the late 1960s and early 1970s, occasionally students and school officials still disagree on the question of what constitutes appropriate student appearance.

The Supreme Court has not addressed the question of whether students have a constitutional right to determine their own appearance. The lower federal courts are not in agreement on the question, but most appear to uphold the view that local school boards have the power to adopt reasonable rules and regulations pertaining to student appearance to protect student's safety and health and in furtherance of school discipline.[37] In Zeller, the parents of a high school student brought a suit arising out of the student's exclusion from the soccer team for noncompliance with certain athletic codes regulating hair. The Court of Appeals, upholding the district court's dismissal of the student's case, said that regulations with respect to students' hair length constitute an area that is

appropriate for the judgment of school officials. The court thus declined to hear the case, finding that basic constitutional values were not implicated.

COMMENT

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Despite the holding of the court in Zeller, which indicates that issues concerning student appearance do not implicate constitutional rights, as a practical matter, it is desirable to avoid unnecessary friction around the issue. Therefore, in developing a code or guidelines pertaining to dress and appearance, school districts should take care to ensure that any regulations adopted are reasonable. They should be based on goals such as preventing interference with the orderly operation of the school and protecting the health and safety of the students. It is important that the regulations be clear so that students will understand what is and is not considered to be appropriate dress. They should also be clear about the options schools may use to enforce school dress codes, e.g., when students may be sent home to change clothes, or be precluded from attending class.

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One possible way of dealing with dress codes is for each school to develop guidelines for student dress with the participation of pupils, faculty members and parents. Any code that is developed should take into account the customs and cultures of the community and the needs of the students and their parents.

4. Marriage, Pregnancy and Parenthood

Most courts today hold that a school cannot exclude students from either the regular school program or from extracurricular activities on the basis of marriage, pregnancy or parenthood.[34] Many of these courts have expressed the view that exclusion of such students from the regular school program

violates their constitutional rights and their right under state law to receive an education. These courts have also considered the opportunity to participate in extracurricular activities an integral part of a student's education, which cannot be taken away solely on the basis of marriage or family status.

Specific federal law also ensures that married and/or pregnant students are able to continue to receive the same education as is available to any other students. The 1972 Amendments to the Education Act[39] prohibit discrimination on the basis of sex in educational programs receiving federal financial assistance. The regulations implementing this law prohibit discrimination in educational treatment based on marital or family status, or pregnancy. Thus, students may not be excluded from any educational program or activity including class or extracurricular activities on the basis of pregnancy. A school is permitted to require a pregnant student to obtain a doctor's certification that she is able to participate in the normal educational program, as long as such a certification is required of all students for other conditions requiring the attention of a physician. Schools may offer an alternative educational program to pregnant students, but participation in the program must be comparable to the regular course of study.[40]

It should be noted that a student's pregnancy may have some bearing on her ability to fulfill the physical education requirement that is imposed by New Jersey laws as a condition

for graduation from high school. A pregnant student may be required to be examined or to supply a certificate from her own physician with respect to her capacity to fulfill this requirement, just as other students may be required to do so with respect to other physical conditions that bear upon the fulfillment of the state requirement.

Knowledge by school personnel and officials of the rights of married and pregnant students is important. Because the laws of New Jersey permit minors to marry under certain conditions, there will be instances where there will be married students in the public schools. In New Jersey, minors under the age of 16 are permitted to marry with the consent of their parents and the consent of the courts. Minors between 16 and 18 may marry with parental consent and individuals 18 years old and over can marry without parental consent.[41] It should be noted that neither marriage nor pregnancy is an express exception to the state compulsory education requirement.[42]

COMMENT

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Student codes of conduct should advise students of their right to continue their education if they marry and/or become parents. The codes also, however, might advise students about the responsibilities that they will face if they choose to marry and/or become parents while they are still in school.

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5. Pupil Records

Every school system collects and maintains a system of records on the students enrolled in its schools. A student's school

record generally contains information about the student's academic and personal progress as he or she goes through the school system.

Three major issues arise in connection with school records:

- o access to the records by students and their parents;
- o confidentiality of the records; and
- o disputes about the content of the information maintained in the records.

Federal and state law and regulations specifically address the rights of students and their parents with respect to school records.[43]

a. Access

The right of access to pupil records is initially that of the parent. A student may see his or her own record only with the parent's consent or in connection with an emergency, when an exception is granted to certified school personnel if in their judgment such knowledge is necessary to protect the health or safety of the pupil. When a student reaches the age of 18, or if a student is younger but is an emancipated minor, rights with respect to the record must be accorded to the student. Where a

student is over 18 but is still financially dependent upon his or her parents or has been declared legally incompetent, the parent still has the rights with respect to the school record. A student who has reached the age of 16 and who is graduating or leaving school without graduating may see his or her own records without a parent's permission.[44]

In general, a parent has the right to see, take notes on, and make copies of all school records that relate to the student. However, notes made by a teacher or other school district employee for his or her own memory or personal use are not considered to be part of a student's record, unless they have been used or reviewed by other school personnel.[45]

A request by a parent to review a student's school record must be granted within 10 days and not to exceed 25 days.[46] A school employee must be present during the time that the record is being reviewed. The board of education may charge a reasonable fee for a record to be copied, provided the cost does not effectively prevent the parents from exercising their rights.[47]

COMMENT

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Student codes of conduct should advise students that if parents wish to see a student's record they should contact the school for an appointment.

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b. Confidentiality

As a general rule, no one may see a student's school record without the permission of the student's parent. However, there are exceptions to this rule. The exceptions permit the records to be reviewed by certain individuals and agencies that need to see the records in order to perform functions related to the health or educational interests of students. The exceptions include, for example, certain certified school personnel, accrediting organizations, staff of the State Department of Education, state protective services agencies and bona fide researchers who have provided the chief school administrator with prior written assurance "that the records will be used under strict conditions of anonymity and confidentiality."[48]

c. Content

By law, only certain information may be kept in a student's school record. Some information is required to be kept such as the student's address, age, sex, citizenship and information such as attendance records, report cards and medical records. Other information is permitted but not required to be maintained. Examples of these are teacher observations and results of standardized tests. Finally, the law forbids the recording of information pertaining to matters such as a student's political or religious affiliations or indications of illegitimacy.[49]

The law permits parents to challenge, and if necessary, correct or have removed any information in a student's record that is improper, inaccurate or incomplete. Requests with respect to these matters should be made to the school in writing. In the event that the school and the parent cannot come to an agreement as to what information should be in the record, the parent may appeal the matter to either the local board of education or the Commissioner of Education. If the appeal is to the board, it must decide the matter within 20 days, after which an appeal can still be made to the Commissioner.[50]

6. Violence and Vandalism

The laws of New Jersey require school personnel to maintain order, discipline and safety in the schools. Thus, school officials have authority to prevent disorderly conduct by students,[51] and students are specifically required by law to submit to this authority.[52] Students are liable to punishment and to suspension or expulsion from school for a physical assault upon another pupil. In addition, school officials are required to suspend students for assaulting teachers, administrators, board members or other members of a board of education,[53] and have the specific power by law to seize weapons or other dangerous items and to quell school disturbances.[54] New Jersey also provides for the suspension or expulsion of a student who causes substantial injury to

school property.[55] In addition, in those instances where minors injure the property of a school, their parents or guardians may be held liable for damages in the amount of the injury to be collected in a court of competent jurisdiction.[56]

COMMENT

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Codes of student conduct should clearly and unequivocably state the prohibition against any and all acts of violence at school. This prohibition should be stated to include threats of violence, the possession of weapons and any and all other dangerous and disruptive activities. The code should make clear the right and obligation of school personnel to ensure the physical safety of the teachers, students and staff. Also, the code should state the penalties for violation of the rules forbidding violent and threatening behavior. Students should be advised that in addition to any penalties that the school might impose, they run the risk of criminal charges being brought against them. Furthermore, they and/or their parents could be sued in a court of law by the victim of an assault, or for any other wrongful act that could give rise to civil liability under the law.

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7. Search and Seizure

Increased drug use by students in the public schools has focused attention on the question of whether school personnel may search a student's possessions or locker without a warrant. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures and in general requires issuance of a warrant before the police can search private property.

Most courts have refused, however, to strictly apply the same Fourth Amendment requirements to searches of student lockers by

school personnel. The New Jersey Supreme Court recently ruled on the question of the applicability of the Fourth Amendment to the school setting.[57] Subsequent to their decision, the United States Supreme Court ruled on the question of the proper standard for determining the legality of searches conducted by public school officials in New Jersey v. TLO.[58]

In the TLO case, a teacher discovered 14 year old TLO smoking cigarettes in a girls' restroom, in violation of a school rule. The teacher took TLO to the assistant principal's office. After TLO denied that she had been smoking, the assistant principal searched her purse, where he found a pack of cigarettes and noticed a package of cigarette rolling papers that are commonly associated with the use of marijuana. He then continued his search and found various drug-related paraphernalia and marijuana. When the state brought delinquency charges against TLO, she argued that the search of her purse violated the Fourth Amendment.

The New Jersey Supreme Court held that the Fourth Amendment protects students from unreasonable searches and seizures by school officials and found the search of TLO's purse was unreasonable. In reviewing that decision, the United States Supreme Court agreed with New Jersey that the Fourth Amendment applies to student searches but found that the search of TLO was reasonable. It concluded that:

> ...,the New Jersey Supreme Court also held that (the vice principal) had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T.L.O. was smoking in the lavatory. Certainly this report gave (the vice principal) reason to suspect that T.L.O. was carrying cigarettes with her; and if she did have cigarettes, her purse was the obvious place in which to find them. (The vice principal's suspicion that there were cigarettes in the purse was not an "inchoate and unparticularized suspicion or 'hunch,'" Terry v. Ohio, 392 U.S., at 27; rather, it was the sort of "common sense conclusion[n] about human behavior" upon which "practical people" - including government officials - are entitled to rely, United States v. Cortez, 449 U.S. 411, 418 (1981). Of course, even if the teacher's report were true, T.L.O. might not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: "sufficient probability not certainty, is the touchstone of reasonableness under the Fourth Amendment..." Hill v. California, 401 U.S. 797, 804 (1971). Because the hypothesis that T.L.O. was carrying cigarettes in her purse was itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher's accusation. Accordingly, it cannot be said that (the vice principal) acted unreasonably when he examined T.L.O.'s purse to see if it contained cigarettes.*** (Emphasis Supplied.)[59]

The United States Supreme Court said that the Fourth Amendment's rule against unreasonable searches and seizures is not limited to searches carried out by law enforcement officials; it also applies to searches conducted by school officials. Although the court recognized that students have some legitimate expectations of privacy, this must be balanced against the school's equally legitimate need to maintain an environment in which learning can take place. The court said that striking this balance requires some easing of the restrictions to which searches by public officials are normally subject. Accordingly, the court said that school officials need not obtain a warrant before searching

a student who is under their authority, and that school officials are not subject to the requirement that the search be based on probable cause to believe that the student has violated or is violating the law. Rather, the court said that the legality of the search depends simply on the reasonableness of the search, under all of the circumstances.

The court went on to say that determining the reasonableness of a search involves two questions: (1) whether the search was justified at its inception; and (2) whether the search, as conducted, was reasonably related in scope to the circumstances that justified the interference in the first place. It said that under ordinary circumstances, the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. The court also said that such a search will be permissible in scope when the measures used are reasonably related to the objectives of the search, and are not excessively intrusive in light of the student's age, sex and the nature of the infraction.

Applying this standard, the Supreme Court held that the search of TLO was not unreasonable. It first found that the initial search for cigarettes was reasonable. The report that TLO had been smoking justified a reasonable suspicion that she had cigarettes in her purse. The court also said that the discovery

of the rolling papers gave rise to a reasonable suspicion that TLO was carrying marijuana as well as cigarettes in her purse. This suspicion justified the further search that revealed the rest of the evidence of drug related activities.

It should be noted that in TLO, however, the Supreme Court specifically did not address the question of whether a student has a legitimate expectation of privacy in lockers, desks or other school property provided for the storage of school supplies. In addition, the Supreme Court did not address the question of the standards governing searches of such areas by school officials or other public authorities acting at the request of school officials.

However, in State v. Engerud,[60] which was decided by the New Jersey Supreme Court with TLO, the New Jersey Supreme Court held that an anonymous tip that a student was selling drugs did not provide reasonable grounds for school officials to search the student's locker without a warrant. The court said that a student has an expectation of privacy in the contents of his or her locker. Further, the student is justified in believing that the master key which the school has will be employed at his request or convenience, unless the school has carried out a policy of regularly inspecting student lockers, in which case there would be no expectation of privacy. Legislation recently enacted in New Jersey provides that school officials may inspect

school lockers or other storage facilities, provided that students are informed in writing at the beginning of each school year that such inspections may occur.[61]

COMMENT

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As a result of the decision in this case, codes of student conduct should indicate that school officials may conduct reasonable searches of student property and lockers, if they have reasonable grounds to suspect that the search will reveal evidence that the student has violated or is violating either the law or the rules of the school. To ensure against student expectation of privacy, school districts should issue written notices to students that lockers or other storage facilities are subject to periodic inspection.

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VI. DISCIPLINARY SANCTIONS

Clearly, schools have the power to enforce rules and regulations by imposing disciplinary sanctions. This section of the guide will discuss the basic rights and procedures to which a student is entitled in this area.

A. Due Process

1. The Right to a Hearing

The Fourteenth Amendment to the United States Constitution guarantees that no person may be deprived of life, liberty or property without due process of law. This right to due process basically means that the government cannot deprive a person of his or her property, or an important right, or impose upon him or her a serious punishment, without first following certain procedures designed to ensure that any such action is fair. The main elements of due process are notice, an opportunity to be heard and an impartial hearing.

In the school setting, where school personnel are employees of the government, due process means that the school cannot impose serious disciplinary sanctions such as suspensions or expulsions on a student without first following certain procedures that give the student an opportunity to present his or her side of the story. The extent of formality required in permitting the

student an opportunity to be heard varies with the circumstances and the severity of the sanctions that may be imposed.

2. Matching Consequences to Infractions

The right to due process also means that the state must have a valid objective in depriving a citizen of something that is important, and that the means used must be reasonably designed to meet that objective. In the school setting, this means that any sanction imposed on a student for a disciplinary violation must be a reasonable one. The punishment must be in proportion to the violation that was committed and should be consistent with the purposes for which student disciplinary rules were established, i.e., to maintain safety and order in the schools so that the primary goal of the school - to educate its students - can be accomplished.

B. Suspensions and Expulsions

A suspension is a temporary exclusion from school, while an expulsion is a permanent one. Because a suspension or expulsion is a serious matter that can affect a student's standing in school as well as his or her long-term opportunities, the law provides that certain procedures must be followed before a student can be suspended or expelled from school.

1. Reasons for Which a Student may be Suspended or Expelled

New Jersey law provides a great deal of guidance with regard to the reasons for which a student may be suspended or expelled from school.[62]

A student can be suspended or expelled:

- for continued and willful disobedience, or defiance of authority;
- for conduct which constitutes a continuing danger to the physical well-being of other students;
- for the habitual use of profanity or obscene language;
- for vandalism of school property;
- for the physical assault, robbery or attempted robbery of other students;
- for participation in or inciting demonstrations involving the unauthorized occupancy of school buildings;
- for inciting truancy by other students; and
- for the illegal possession or consumption of alcoholic beverages or controlled substances on school property.

It is important to point out that a student may be suspended from school for conduct which, though not specifically listed in the statute, the student was or should have been aware of as a violation of school policy.[63] Also, a school may suspend a student for misbehavior after school hours or away from the school grounds where that misbehavior is detrimental to school safety, discipline or property.[64]

2. Short- and Long-Term Suspensions

There are two kinds of suspensions, short-term and long-term. A short-term suspension is usually defined as a suspension for 10 days or less. A long term suspension involves more than 10 days.

The procedures that a school must follow in order to suspend a student differ depending on whether the suspension is short term or long term.

a. Short-Term Suspensions

The United States Supreme Court stated what the due process clause of the Constitution requires in connection with a short-term suspension.[65] In Goss v. Lopez, a public high school student was suspended for a period of up to 10 days for misconduct. The court held that even that short-term suspension implicated the "property" and "liberty" interests referred to in the due process clause of the

Constitution. The court said that a property interest was involved because under the state law, the student was entitled to a public education. A liberty interest was also involved because a suspension, even a short one, can seriously damage a student's standing with his or her teachers and fellow students, as well as interfere with future opportunities. The court rejected the argument of the school system that a loss of only 10 days was too brief a period for the due process clause to apply.

The court then held that a student suspended for less than a 10-day period was constitutionally entitled to be given "oral or written notice of the charges against him, and if he denies them, an explanation of the evidence that the authorities have, and an opportunity to explain his side of the story." The Court said that the due process clause required at least these precautions against the possibility of mistaken findings of misconduct and arbitrary exclusion from school. The Court did not require, in the context of short suspensions, however, that students have the right to secure counsel, to confront and cross examine witnessess or to call their own witnesses to verify their own version of the incident. Finally, the Supreme Court in Goss recognized that there are certain situations in which prior notice and a hearing cannot take place in connection with a short suspension. The Court said that where a student's

presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, that student may be immediately removed from school, but the notice and form of hearing required for the short-term suspension should follow as soon as possible.

It should be noted that although in Goss the Supreme Court held that the due process clause required procedures even in the case of brief suspensions, not all disciplinary sanctions that may be imposed on a student implicate due process. The right to a hearing applies to serious punishments but not to minor ones. Courts have found brief, in-school punishments such as a reprimand or admonition, restrictions to the classroom during a free period, or after-school detention not sufficiently serious to require due process procedures.[66]

b. Long-Term Suspension or Expulsion

The Supreme Court in Goss v. Lopez did not establish specific steps to be followed for suspensions of longer than 10 days or for expulsions from school. However, the court said that these sanctions may require more formal procedures. New Jersey courts have indeed required more formal procedures before a long-term suspension or expulsion may be imposed.[67] In such cases, the courts

have required that students be afforded notice of the charges against them and a more formal hearing than for a short-term suspension.

These more formal procedures include:

- a written notice containing a statement of the specific charges and grounds which, if proven, would justify suspension;

- a list of the witnesses against the student and an oral or written report on the facts to which the witnesses will testify;

- an opportunity for the student to present his or her own defense and to produce either oral testimony or written affidavits of witnesses in his or her behalf;

- the student's right to confront and cross-examine witnesses;

- a right to inspect the results and findings of the hearing, if the hearing is not before the board of education; and

- a right to be represented by an attorney if the student wishes to secure one.

c. Reporting of Suspensions

In New Jersey, when a student is suspended from a public school, specific procedures must be followed. First, the school principal must report the suspension to the superintendent of schools. The superintendent is then required to report the suspension to the board of education at its next regular meeting.[68] No suspension may be continued longer than the board's second regular meeting unless the board itself determines to continue it. At that second meeting, the board has the power to end or continue the suspension or to expel the student.[69] A hearing on a student's suspension may be delegated by the board to a board committee or to school administrators for the purpose of determining facts and making recommendations. If this is done, however, the board as a whole must receive and consider either the transcript or a detailed written report of the hearing prior to taking final action.[70]

d. Consideration of Alternatives

An expulsion may have serious effects on a student's opportunities in the future for higher education and employment. Therefore, New Jersey state administrative regulations require that as a prerequisite to any board action to expulsion, the student must be referred to the district's basic child study team for a preliminary determination as to whether the student is in need of special education.[71] The

purpose of this evaluation is for a determination to be made as to whether the student's misbehavior arises out of a handicapping condition.

Students not eligible for special educational services, but yet exhibit patterns of behavior that are generally disruptive to the educational process, should be considered for an alternative school program. Arrangements other than the conventional school program are required to provide chronically disruptive students with the special support and assistance they need to develop more responsible patterns of behavior. This in turn protects the safety of others and makes the environment more conducive to learning and teaching. The program completion provisions, contained in the New Jersey Administrative Code, provide school districts with the legal basis to establish alternative education programs.[72]

e. Appeals

A student has a right to appeal a decision suspending him or her from school. The first level of appeal is to the superintendent of schools. The next levels involve appeals to the local board of education, to the State Commissioner of Education, and to the State Board of Education within 30 days after the Commissioner has made his decision.[73] Thereafter, a student may appeal to the state court system.

C. Lowering of Grades and Denial of Credit

The lowering of grades and the denial of credit for a course as disciplinary sanctions are treated very differently in New Jersey. Grades cannot be lowered as a result of work missed or while the student was on suspension for poor conduct. The student must be given the opportunity to make up the missed work. On the other hand, the denial of credit for an entire course has been permitted in some cases where students were excluded from class for disciplinary reasons or where students had cut classes or otherwise had excessive absenses.

The Commissioner of Education held that the use of grades as a punishment is improper.[74] The ruling stated that:

> The use of marks and grades as deterrents or as punishment is usually ineffective in producing the desired results and is educationally not defensible. Whatever system of marks and grades a school may devise will have serious inherent limitations at best, and it must not be further handicapped by attempting to serve disciplinary purposes also.

The lowering of grades as punishment was also held improper.[75] In that case, a student was suspended during the final exam period and his teachers were instructed to record zeros for his exam grades. The Commissioner found that the suspension itself was proper but that the grade penalty should not be superimposed on the suspension penalty. He directed that the student be given a reasonable time to prepare for and submit to final exams comparable in difficulty to those that he had missed as a result of the suspension. The

Commissioner also struck down policies which permitted or required the use of zeros in connection with suspensions and emphasized that students must be permitted to make up work missed while on suspension.[76]

Although a student's grade cannot be lowered as a result of work missed while on suspension, a suspension can have an effect on a student's ability to receive credit for a course. A student was suspended from school for 10 days and excluded from his chemistry class for the remainder of the term as a result of misbehavior in the chemistry lab. The exclusion from the chemistry class resulted in a loss of credit for the course for the entire term. The student argued that he had completed more than a sufficient portion of the course to warrant a passing grade and the receipt of credit. The Commissioner, however, upheld the exclusion of credit and directed that the student be given the opportunity to enroll in a summer course to enable him to complete equivalent work.[77]

The Commissioner of Education has also upheld denial of course credit to students with an excessive number of absenses from class.[78] He upheld the denial of diplomas to several seniors on this ground. In so doing, the Commissioner explained the importance of regular class attendance to the achievement of a student's education. His ruling stated that:

> Frequent absenses of pupils from regular classroom learning experiences disrupts the continuity of the instructional process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra after-school instruction. Consequently, many pupils who miss school frequently

> experience great difficulty in achieving the maximum benefits of schooling. Indeed, many pupils in these circumstances are able to achieve only mediocre success in their academic programs. The school cannot teach pupils who are not present.

However, denial of credit for an entire course because of a small number of cuts may or may not be upheld by the Commissioner, depending on the circumstances of the case. The Commissioner held that in one case it was too harsh a penalty to exclude a student from her history class and to deny her all credit for a course on the basis of only one cut.[79] However, the Commissioner upheld a local school policy that permitted exclusion from class and denial of credit after three cuts.[80]

In Goss v. Lopez, which held that due process must be afforded a student in connection with a short-term suspension, there was no discussion of whether a student is entitled to due process regarding the denial of course credit. In New Jersey, the Commissioner of Education addressed a part of this issue.[81] He held that a student faced with the loss of credit resulting from excessive absenses should be afforded a record review, be specifically informed as to the attendance record upon which the determination will be made, and have an opportunity to rebut or plead mitigation and present witnesses on his or her own behalf. The Commissioner held, however, that the procedure used should not rise to the level of a full adversarial proceeding including the right to counsel and the right to cross-examination.[82]

COMMENT

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It is advisable that any written policies concerning denial of credit and exclusion from classes include procedures that will ensure that a

student who may be subjected to these penalties has a meaningful opportunity to present his or her side of the case.

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D. Corporal Punishment

The use of corporal punishment as a means of disciplining school children has a long history in this country, and even today, there is wide disagreement about the wisdom of using it as a means of discipline. The states have the power to forbid corporal punishment in their schools, and New Jersey has chosen to forbid it. New Jersey law provides that "No person employed or engaged in a school or educational institution .... shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution."[81]

There are certain conditions, however, where physical force may be used on a student in New Jersey schools. Thus, the law states that any reasonable and necessary force may be used in four specific circumstances:

1. To quell a disturbance threatening physical injury to others;
2. To obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;
3. For the purpose of self defense; and
4. For the protection of persons or property.

E. Other Sanctions

The Commissioner of Education has upheld a variety of measures as disciplinary sanctions. As a general rule, a specific sanction will be upheld where it is reasonable and is designed to maintain an orderly school environment. The Commissioner held that denying the privilege of participation in extracurricular activities was a reasonable exercise of the discretion of the local school board where a student had been involved in drug abuse activities.[84] Exclusion from participation in graduation or promotion ceremonies has been upheld in cases involving class cutting, chronic lateness, and insubordination.[85]

VII. SPECIALIZED DISCIPLINARY ISSUES

Although all public school students share certain substantive and procedural rights, some areas pertaining to student behavior merit special consideration. This special consideration is warranted because the behavior in question takes place outside of school hours or off school grounds, or because the issue is relevant to only a limited number of pupils in the student population.

This section of the guide will address some of the issues raised in these special areas.

A. Behavior Outside of School

Generally, school officials do not have authority over student misbehavior off school grounds or after school hours unless it involves school-related activities. However, they do have the authority to punish, suspend or expel students for any behavior off school grounds or after school hours where that behavior is detrimental to school safety, discipline or property. For example, a student and his parents were held financially liable for damages after the student set a fire at the school on a Sunday night.[86] In another case, a student became involved in an altercation with a neighbor's daughter in the neighbor's home after school hours. The altercation resulted in the girl being cut with a knife, and the student was suspended. The court said that a school has the power to

suspend students for conduct away from school grounds where such action is necessary for the student's physical or emotional safety and well-being of other students, teachers or public school property. Any such suspension, however, must be done in accordance with due process.[87]

COMMENT

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Codes of student conduct should advise students of the school's authority regarding activities off the school grounds and after school hours. They should also give examples of the kind of out-of-school behavior that could result in suspension or expulsion.

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B. The Push-Out Problem

Although by law students in New Jersey have a right to a free public education until they reach the age of 20, the age of compulsory education is only 16. On occasion, a case may arise where the attendance, discipline or achievement record of a student who has exceeded the age of 16 is so poor that school personnel may seriously question whether that student's continued presence on the school rolls is worthwhile. It is important that the codes developed by local districts make clear the rights and responsibilities of school personnel, parents and students in such cases.

It is a violation of the right of a student to a free public education for school officials to request, persuade or force a student to leave school after he or she has reached the age of 16 because of poor attendance, discipline or poor achievement.

Such action in effect would be an expulsion, and if a student is being expelled from school, school authorities must follow the procedures mandated by law to ensure that the student receives due process of law.

The right of students to receive a free public education until age 20 and the mandate that the school system provide a "thorough and efficient education" require that schools take steps to see that students who are doing poorly in school meet the minimum proficiency levels prescribed by state law.[88] Ensuring that a student entitled by law to remain in school does remain there to receive a thorough and efficient education puts responsibilities on not only the school system but also on parents. Thus, New Jersey state regulations require that parents be continuously involved in the process of evaluating their children's progress in school.[89]

COMMENT

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Parents should be encouraged to keep abreast of their children's performance in school and to cooperate with teachers and other school officials. This would enable them to help resolve such problems as attendance and poor academic achievement. It should also be stressed in the codes that every student is responsible for cooperating and working diligently toward the achievement of his or her own education.

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C. Discipline for Handicapped Students

School officials and personnel should be familiar with federal legislation relevant to disciplining handicapped students. The Education for All Handicapped Children Act of 1975 is a federal law

that was passed to ensure that all handicapped children receive a free and appropriate public education.[90] This law requires that handicapped children receive an education that focuses on their unique needs and that such education take place in the least restrictive environment. The act also provides that handicapped children have the right to have any changes in their educational placement made only in accordance with procedures specified by the law.[91]

Another federal law, Section 504 of the Rehabilitation Act of 1973, prohibits discrimination against handicapped persons by any school or program that receives federal financial assistance.[92] This act protects handicapped students from being punished for behavior that is a result of their handicapping condition.

Under these laws, handicapped children cannot be subjected to disciplinary measures such as long-term suspensions or expulsions which have the effect of changing the child's educational placement.[93] Any action that would change the educational placement must be taken only by a professional team. The parents of the child have a right to participate in and appeal such placement decisions. Thus, the Education for All Handicapped Children Act provides that before there can be a change in the placement of a handicapped child, authorities must provide:

1. Prior written notice to the parents or guardians of the child of the proposed change in the child's placement. The notice must inform the parents or guardians in their native language, if this is feasible, and must advise them of all available procedures;

2. An opportunity for the parents or guardians to examine all relevant records concerning the identification, evaluation and educational placement of the child, and to obtain an independent educational evaluation of their child; and

3. An opportunity for the parents or guardians to present complaints or objections concerning the proposed action.

The law provides an impartial due process hearing whenever a complaint or objection is received. At such hearing, the parents or guardians have the right to counsel, the right to present evidence and to confront and cross-examine witnesses, and the right to a written decision. The law also provides for appeals through the educational and, later, the court system where parents are unhappy with a decision made concerning their child's placement.

As required by federal law, New Jersey state regulations provide similar due process provisions.[34] The protections provided by these federal and state rules do not mean that handicapped students are not subject to any disciplinary measures. As is true with other students, handicapped students can be subjected to disciplinary measures such as detention, extra work assignments or verbal reprimands. Also, a handicapped student may be suspended for a short-term period. The court upheld a 10-day suspension from school of a handicapped student on the ground that this short suspension did not constitute a change in the child's educational placement.[35] In another case, a five day suspension was also upheld.[36]

Both federal laws and New Jersey regulations provide that an individualized education program (IEP) must be written for each student who is classified as handicapped. The IEP is a description of the student's educational plan for the year. It is a detailed program with goals and objectives, including monitoring devices designed to meet the particular student's unique needs. Because federal law prohibits punishing a student for behavior arising out of a handicap, the IEP should be consulted to determine whether a proposed disciplinary sanction is appropriate for a particular handicapped student.

Finally, it should be reiterated that New Jersey administrative regulations require that prior to action by a local board of education to expel any student, the student must be referred to a basic child study team to determine whether the pupil is in need of placement in special education.[97]

D. Eighteen - Year - Olds

In New Jersey, 18 is the age of majority.[98] Reaching the age of majority essentially means that a young person has the same rights as an adult citizen. For example, he or she may exercise the right to vote, marry without the consent of parents, enter into binding contracts, consent to all types of medical care and procedures, and exercise rights to access with respect to his or her school records.

Because New Jersey law provides for the right to a free public education until a student is 20 years old, sometimes young people who have achieved majority status are still in school. This gives rise to a somewhat peculiar situation: the school which is said to act "in loco parentis" -- that is, in the place of the parents regarding its students -- now has students who are considered under the law to be full-fledged adults, not subject to the control of parents at all.

COMMENT

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Codes of student conduct should advise students of the changes that will occur in their legal status when they reach the age of 18. They should also discuss any new rights that students will have at that point, such as the right of access to school records.

Students should be reminded that even after reaching the age of 18, they are still members of the school community and must continue to comport themselves with the same level of respect and cooperation as they did before reaching adult status.

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VIII. SHARED CONCERNS FOR SCHOOLS AND OTHER AGENCIES

A public school does not operate in a vacuum; it is one of many institutions in the state that has duties and responsibilities regarding young people. Sometimes the public school, either by law or as a practical matter, must cooperate with other government agencies so that these agencies, too, can carry out their responsibilities.

COMMENT

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Codes of conduct should discuss those situations in which the school is required to make reports to or otherwise cooperate with outside agencies.

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A. Child Abuse

New Jersey, in common with every other state, has a child abuse reporting law. The law's purpose is to identify children who may be physically abused at home so that protective steps may be taken.

Under New Jersey law, school personnel, or anyone else who has reasonable cause to believe that a child has been abused, must report the matter promptly to the Division of Youth and Family Services.[99] The law provides the person reporting with immunity from any civil or criminal lawsuits arising from such a report.[100] The law also states that any person who is aware that child abuse has been committed and fails to report it is considered to be in violation of the law.[101]

B. Drug and Alcohol Abuse

New Jersey law requires that any teacher or other member of a school's educational staff who believes that a student is under the influence of drugs must report the matter to the principal of the school. The principal in turn must notify the student's parent or guardian. If, after a medical examination, it is determined that the student is under the influence of such substances, this fact must be reported by the school to the New Jersey Department of Health. Also, the student must be sent home and cannot return until a physician certifies that he or she is physically and mentally able to resume attendance at school.[102]

In addition, local boards of education must adopt and implement policies and procedures for the evaluation and treatment of pupils involved in incidents of possession or consumption of alcoholic beverages on school property or at school functions.[103]

C. Police in the Schools

In our society, the police have the responsibility to protect all citizens by enforcing the laws of the community. Although we hope that occasions rarely arise which require the presence of law enforcement officials in the public schools, we must realize that occasionally this will occur.

Police may enter a school if they are invited on the premises by school officials, if they suspect a crime has been committed, or if they have a warrant for an arrest or a search. A police search of a student's locker is subject to the same Fourth Amendment protections that apply to any other citizen. This means that the police must have a warrant or have probable cause to believe that a crime has been committed.[104] As has already been discussed in the Search and Seizure section, school officials may search a student's locker without a warrant if they suspect that the search will reveal evidence that the student has violated or is violating either the law or the rules of the school, or if written notices have been given to students that lockers or other storage facilities will be periodically inspected.

COMMENT

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Students should be advised that they have the same rights with respect to the police in school that they have out of school: they have the right to be informed of their legal rights, to be protected from coercion and illegal constraint, and to remain silent.[105]

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IX. GRIEVANCES AND APPEALS

Although students have substantial legal rights, whenever possible, disagreements between students and the school administration should be resolved without resort to formal legal procedures. On the other hand, it is recognized that some disagreements may not lend themselves to resolution simply by informal discussion. For this reason, school districts are encouraged to provide a mechanism in their codes of conduct for a grievance procedure. In addition to providing some formal structure, it should also be flexible enough to encourage the kind of give-and-take most likely to lead to resolution of a dispute.

COMMENT

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There are many possible structures for grievance procedures. One structure, for example, would provide for the submission of a grievance directly to the principal, who in turn would be required to meet with the appropriate personnel and render a written decision on the matter within a specified period. Such a procedure could contain a structure for appeals to be taken to the superintendent of schools and the local school board. Another possible structure would involve establishment of a grievance committee composed of parents, students, faculty, and school administrators. Any student with a grievance could communicate his or her concern in writing to any member of the grievance committee for consideration. The committee would have the responsibility for carefully investigating the grievance and reporting its findings and recommendations to the school principal. The principal would then be responsible for taking action based on the committee's recommendation or for referring the matter to the superintendent of schools for action.

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There is room for a great deal of flexibility in the development of grievance procedures. Each district must develop a process that is effective in light of its own needs.

X. THE PROCESS FOR DEVELOPMENT OF THE CODES

A governance program begins and ends with human beings. Its success depends on how the people who administer the program -- students, teachers and principal -- perceive each other. If there is mutual trust and respect among all people in the school, the governance program has every chance of achieving its objectives. If trust and respect are absent, student governance will be a constant uphill struggle.

Edward T. Ladd and John C. Waldren

A. Achieving Broad Based Participation

The 1980 resolution of the New Jersey State Board of Education encourages school districts to develop student codes of conduct with broad participation from students, parents and the larger community. The state board believes that the codes will achieve more acceptance and support if those who are directly affected by them are directly involved in their formulation.

The board of education of each district is the governing body that has the authority to establish local school policy under law.[106] It is the responsibility of the local board to adopt policy that provides a safe and healthful learning environment for all students. Most school districts have procedures in their bylaws for the formulation, adoption and amendment of policy. These procedures provide a means whereby all interested parties in the school community may submit proposals and contribute opinions and information for the board's consideration. Boards of education have recognized their responsibility to the various publics they serve and generally have adopted bylaws allowing sufficient time for public

discussion of policy matters. On locally volatile issues, boards of education generally schedule special meetings to ensure adequate communication. Therefore, in general, the policy development and review system used in school districts adequately meets the need for school community input. However, a need for the formation of local representative committees to help with the implementation of board policy in certain areas is appropriate.

Accordingly, in developing codes of conduct, school districts should seek the participation of groups offering diverse perspectives. Students, teachers, administrators, support personnel, and parents are, of course, the obvious groups which should be involved. However, representatives of other groups in the community, i.e., attorneys, representatives of local government, court personnel, and social services organizations whose duties relate to youth may also be able to assist in development of the codes. In securing broad participation, school districts should take special care to insure that there is meaningful participation by racial, ethnic or religious groups present in the community.

The participation by students, the group that will be most affected by the codes, cannot be over-emphasized. Students' awareness that they have played an important role in developing the codes may have a significant positive impact on student conduct. This can contribute to the kind of acceptance of the codes that would make them effective in promoting an orderly school environment. It will also contribute to the kind of school climate that increases students' general

positive identification with the school, thus promoting "school spirit."

At first, students may understandably be a bit shy or even skeptical about participating in development of the codes. Districts must be imaginative in developing ways to encourage and sustain student participation.

B. Steps in Developing a Code

1. Formation of a Local Representative Committee

Working effectively with many different groups to produce a written code of student conduct will require a good deal of planning. Each school district should form a local representative committee as a basic structure. The purpose of the committee would be to study the problems around the issue of student conduct, to analyze the alternatives, to consider various viewpoints, and utlimately, to draft the code.

The first step, then, is to form the committee. Selection of individuals for committee participation may be achieved in several ways. Announcements of the school district's plan to develop a student code of conduct may be made at meetings of religious groups or community organizations. Announcements in the local media, posted announcements, word of mouth and handing out fliers are other possible ways of publicizing

formation of the committee. Identification of students for committee membership may be done by contacting student organizations, requesting volunteers or by obtaining recommendations from school personnel or other organizations. It is important, of course, that the method of selecting students and other committee members be perceived as fair, whether it takes place by a process of election or by a screening and interviewing procedure.

Carefully forming a good committee is critical. Selecting individuals who are interested in and have time for the committee, as well as those who are responsible and can work creatively with other people, will result in a code that is likely to receive broad acceptance. Obviously, it is important that the person selected to be chairperson of the local representative committee be an individual who is sensitive, dependable, well-organized, and able to keep the committee consistently moving toward its goal.

2. Undertaking a Needs Analysis

All communities are not the same. Gathering information to determine what student behavior issues need to be addressed in a particular community will increase the likelihood that the committee drafts a code that is responsive to local needs. For local planning purposes, nationwide data on the incidence of disruptive behavior in the schools are clearly not adequate. On

the other hand, it is not necessary for a community to hire a battery of sociologists and statisticians to obtain this information. In the case of most communities, it is likely that a small survey, perhaps even an informal one of school principals and other school personnel and of students themselves, would be sufficient to assess local needs. The more varied the sources of the data, the more reliable and valid the obtained results will be. The information collected by a particular district might pertain, for example, to the incidence of personal theft or violence or any other damaging or disruptive acts such as break-ins or vandalism. Similarly, information could be collected to determine the frequency in the particular community of other kinds of student behavior issues, such as political disputes or substance abuse. Some attempt should be made to determine the attitudes of school and community representatives toward the current code of conduct and any proposed changes. Finally, such an informal and/or small scale survey could assist in determining whether there are particular groups, such as 18-year-olds, handicapped students or students who are spouses or parents, whose particular concerns need to be addressed in the code, and if so, in what detail.

C. Drafting the Code

1. Mechanism for Resolving Disputes

After the needs of the community and the legal principles that apply to student behavior issues are understood, and the different viewpoints of committee members on the various issues have been considered and discussed, the committee must come to some consensus as to what the code will contain. This may not be an easy job.

Deciding how the law applies to particular proposed code provisions may not always be easy, and certainly communities and individuals are not always in agreement as to what is or is not proper or appropriate behavior for students. The committee is very likely to reflect these differing values and points of view. Accordingly, the committee must establish some mechanism for resolving disputes in advance of these inevitable conflicts among members as to what the code should contain.

2. Actual Drafting

After the committee has reached a consensus on exactly what the code should contain, including the precise positions that will be taken on the issues that it covers, one member or a group of members should be selected to produce an actual draft of the code. That draft should then be copied and circulated among the other committee members for review, comment and discussion. It should be kept in mind that the codes should be drafted with an emphasis on clarity and readability.

3. Setting a Timetable

The committee should establish a realistic timetable for the process of producing the code. Specific dates should be set for production of the initial draft and for the final product. A sufficient and realistic amount of time should be provided between those dates for the circulation of drafts and the discussion and revision that will be an inherent part of the process.

4. The Importance of a Final Review

Before the code is put into its final form for distribution, it is critical that it receive a final review by appropriate officials of the school district and by the school district's legal counsel. This will ensure that it is consistent with both statewide educational policies and with the applicable law. Any necessary formal approval by the local board of education or other entities must be secured.

D. Distribution of the Codes

In order for the codes to serve their intended purpose, they must be widely distributed to students, parents, and school staff. The State Board of Education resolution specifically suggests that the codes be distributed at no cost to pupils, staff, parents or guardians at least

once every three years. It further states that they should be distributed to all new staff and pupils, and to parents or guardians of new students whenever they enter the school district.

Each district must develop an appropriate and effective method to assure that all concerned persons receive copies of the codes and understand their meaning and intent. Indeed, a plan for distribution might be effectively designed by the same local representative committee that drafted the code. Perhaps each school district should require that one or more orientation sessions be conducted with students and staff. This will assure that all students actually become aware of it and have a chance to discuss it with their teachers and peers.

There are many possible ways to achieve distribution and to assure that the codes are read and understood. Copies of the code might be distributed to the local news media. They could be distributed to students in class and integrated into social studies or civics study and classroom discussion materials. After being mailed or taken home to parents by students, the codes could be discussed with parents at regularly scheduled parent meetings or conferences, or at a specific event organized for the sole purpose of discussing the codes. For transfer students, a procedure should be established to ensure that the code is explained to the new students by an appropriate person.

In any event, districts should devise a systematic method by which students, parents and teachers may fully understand the reasons for the school code of conduct and how the rules contribute to the maintenance of an orderly learning environment.

END NOTES

[1] The New Jersey School Boards Association (NJSBA) maintains an extensive file of resources on local district policy development in this area. They have identified 29 policy areas that could be addressed by a local school district if necessitated by local conditions. Many of these, offering sample policy language, have been provided to every school district via their "Policy Portfolio" mailings.

[2] Handbook for Developing A Code of Conduct for Students, New Jersey State Department of Education, Trenton, New Jersey, February 1981. p.4

[3] New Jersey Constitution, Article VIII, Section 4, 1

[4] N.J.S.A. 18A:38-26

[5] Robinson v. Cahill, 62 New Jersey 473, 513, 303 A.2d 273, cert. den. 414 U.S. 976 (1973).

[6] N.J.S.A. 18A:7A-4

[7] N.J.S.A. 18A:7A-5

[8] N.J.S.A. 18A:38-25

[9] Wheatley v. Board of Education of Burlington, 1974 S.L.D. 851

[10] Brown v. Board of Education, 347 U.S. 483 (1954).

[11] 20 U.S.C. 1681

[12] 34 C.F.R. 106.41

[13] New Jersey Constitution, Article 1 paragragh 5 and N.J.S.A. 18A:36-20

[14] Schenck v. United States, 249 U.S. 47 (1919).

[15] Chaplinsky v. New Hampshire, 315 U.S. 568 (1962).

[16] This principle was established by the Supreme Court of the United States in the case of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). This case involved the wearing of black armbands by students to protest American military involvement in Vietnam.

[17] Melton v. Young, 465 F.2d 1332 (6th Cir. 1972), cert. den. 411 U.S. 951 (1973).

[18] Hill v. Lewis, 323 F. Supp. 55 (E.D.N.C. 1971).

[19] Robbins v. Board of Education of the City of Burlington, Burlington County, 1971 S.L.D. 18.

[20] Butts v. School District, 436 F.2d 728 (5th Cir. 1961).

[21] Grayned v. City of Rockford, 408 U.S. 104 (1972); Sullivan v. School District, 307 F. Supp. 1328 (S.D. Tex. 1969) Shanley v. Northeast Indep. School District, 462 F.2d 960 (5th Cir. 1972).

[22] Lipkis v. Caveney, 96 Cal. Rptr, 779, 19 C.A. 3d 383 (1971).

[23] Passel v. Fort Worth Ind. School District, 453 S.W. 2d 888 (D.C. Tex. 1970), cert. den. 402 968 (1971), reh. den., 402 U.S. 941; Robinson v. Sacramento City Unified School District, 245 Cal. App. 2d 278, 53 Cal. Rptr. 781 (1966).

[24] Brown v. Louisiana, 383 U.S. 131 (1966).

[25] Tate v. Board of Education of the Jonesboro (Arkansas) Special School District, 453 F.2d 975 (8th Cir. 1972); Dunn v. Tyler Independent School District, 460 F.2d 137 (5th Cir. 1972); Gebert v. Hoffman, 336 F. Supp. 694 (E.D. Pa. 1972).

[26] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

[27] Holden v. Board of Education of the City of Elizabeth, 46 N.J. 281, 216 A.2d 387 (1966).

[28] Lipp v. Morris, 579 F.2d 834 3d Cir. (1978).

[29] Arbington School District v. Schempp, 374 U.S. 203 (1963); Engle v. Vitale, 370 U.S. 421 (1962).

[30] Wallace v. Jaffree, 53 U.S.L.W. 4655 (1985) and May v. Cooperman, 572 F. Supp. 1561 (D.C. N.J. 1983).

[31] 525 F.2d 278 (4th Cir. 1975).

[32] See Goodman v. Board of Education of South Orange-Maplewood, Essex County, 1969 S.L.D. 88, 1971 S.L.D. 106, 1970 S.L.D. 457; 1973 S.L.D. 779.

[33] Eisner v. Stanford Bd. of Education, 440 F.2d 803 (2d Cir. 1971); Riseman v. School Committee of Quincy, 439 F.2d 148 (1st Cir. 1971). Fujishama v. Board of Education, 460 F.2d 1355 (7th Cir. 1972); Shanley v. Northeast Ind. School District, 462 F.2d 960 (5th Cir. 1972); Nitzberg v. Park, 525 F.2d 378 (4th Cir. 1975). See also Oxfeld v. New Jersey State Board of Education, 68 N.J. 301, 344 A.2d 769 (1975).

[34] Burke v. Bd. of Education of Township of Livingston, Essex County, 1970 S.L.D. 319.

[35] N.J.S.A. 18A:42-4

[36] Miller v. California, 413 U.S. 15 (1973) (adults); Ginsberg v. New York, 390 U.S. 629 (1968) (minors).

[37] In Zeller v. Donagel Schl. Bd. of Education, 517 F.2d 600 (3d Cir. 1975), overuling Stull v. Sch. Board of Education of Western Beaver Jr.-Sr. H.S., 459 F.2d 339 (3d Cir. 1972), the Court of Appeals of this Circuit upheld the right of schools to regulate the hair length of male students.

[38] Holt v. Shelton, 341 F. Supp. 821 (M.D. Tenn. 1972); Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972); Shull v. Columbus Municipal Separate School District., 338 F. Supp. 1376 (N.D. Miss. 1972); Ordway v. Hargraves, 323 F. Supp. 1155 (D. Mass. 1971); Perry v. Granada Municipal Separate School District, 300 F. Supp. 748 (N.D. Miss. 1969).

[39] 20 U.S.C. 1681

[40] 45 C.F.R. 86.40

[41] N.J.S.A. 37:1-6

[42] N.J.S.A. 18A:38-25, 26

[43] The applicable federal law is the Federal Education Rights and Privacy Act, 20 U.S.C. 1232g also called the Buckley Amendment. Federal regulations are at 34 C.F.R. Part 99. The applicable New Jersey law is N.J.S.A. 18A:36-19. The New Jersey regulations appear at N.J.A.C. 6:3-2.1 et. seq.

[44] N.J.A.C. 6:3-2.5

[45] N.J.A.C. 6:3-2.1

[46] N.J.A.C. 6:3-2.2

[47] N.J.A.C. 6:3-2.5

[48] N.J.A.C. 6:3-2.5

[49] N.J.A.C. 6:3-2.3

[50] N.J.A.C. 6:3-2.7

[51] N.J.S.A. 18A:25-2

[52] N.J.S.A. 18A:37-1

[53] N.J.S.A. 18A:37-2 and 37-2.1

[54] N.J.S.A. 18A:6-1

[55] N..J.S.A. 18A:37-2

[56] N.J.S.A. 18A:37-3 and N.J.S.A. 2A:53A-15. See also Piscataway Township Board of Education v. Caffiero, 86 N.J. 308, 431 A.2d 799 (1981), appeal dismissed, 454 U.S. 1025 (1981).

[57] State in Interest of TLO, and in State of New Jersey v. Jeffery Engerud 463 A.2d 934, 94 N.J. 331 (1983).

[58] New Jersey v. TLO, 53 U.S.L.W. 4083 (1985)

[59] New Jersey v. T.L.O. ____ U.S. ____, 105 S. Ct. 733, 83 L.Ed. 2d ___ (1985), rev'd, State ex rel. T.L.O., 94 N.J. 331, 463 A 2d 934 [12 Ed. Law 1184] (1983).

[60] State v. Engerud, 94 N.J. 331, 463 A.2d 934 (1983).

[61] N.J.S.A. 18A:36-19.2

[62] N.J.S.A. 18A:37-2

[63] Babbit v. Moran, 1974 S.L.D. 1145.

[64] R.R. v. Board of Education Shore Regional High School, 109 N.J. Super. 337, 263 A.2d 180 (1970) and Palmyra Board of Education v. Hanson, 56 N.J. Super. 567, 153 A.2d 393 (1959).

[65] In Goss v. Lopez, 419 U.S. 565 (1975).

[66] Linwood v. Board of Education, 463 F.2d 763 (7th Cir.) cert. den., 409 U.S. 1027 (1972).

[67] Tanya Tibbs et. al. v. Bd. of Ed. of the Twp. of Franklin, 114 N.J. Super. 287, 286 A.2d (A.D. 1971); aff'd, 284 A.2d 179, 59 N.J. 506 (1971); 59 N.J. 506 (1971); R.R. v. Bd. of Ed. of Shore Reg. H.S. Distr., 109 N.J. Super. 237, 263 A.2d 180 (Ch. Div. 1970); John Scher v. Bd. of Ed. of West Orange, 1968 S.L.D. 92; G.F. v. Board of Education of Washington, 1 N.J.A.R. 55 (1982). Moreover, in New Jersey, a full hearing must take place within twenty-one days of the initial suspension. See Graham v. Board of Education of Ocean, 1982 S.L.D. 810.

[68] N.J.S.A. 18A:37-4

[69] N.J.S.A. 18A:37-5

[70] E.H. v. Board of Education of Trenton, 1972 S.L.D. 475, 478.

[71] N.J.A.C. 6:28-2.8(f)

[72] N.J.A.C. 6:8-4.2(d)ii

[73] N.J.S.A. 18A:6-9 et. seq.

[74] Wermuth v. Board of Education of Livingston, 1965 S.L.D. 121.

[75] Haddad v. Board of Education of Cranford, 1968 S.L.D. 98.

[76] Minorics v. Board of Education of Phillipsburg, 1972 S.L.D. 86, 90, and in Babbit v. Board of Education of Wood-Ridge, 1974 S.L.D. 1145.

[77] M.H. v. Board of Education of Cherry Hill Township, 1979 S.L.D. 320.

[78] Wheatley v. Board of Education of Burlington, 1974 S.L.D. 851.

[79] E.H. v. Board of Education of Boonton, 1975 S.L.D. 455

[80] G.G. v. Board of Education of New Providence, 1975 S.L.D. 502

[81] L.P. v. Board of Education of Jackson, 1980 S.L.D. 1065

[82] See E.H. v. Board of Education of Boonton, 1975 S.L.D. 455

[83] N.J.S.A. 18A:6-1

[84] E.E. v. Board of Education of Ocean, 1971 S.L.D. 97

[85] See Gertner v. Board of Education of Elmwood Park, 1974 S.L.D. 611; Kenngott v. Lower Camden County Regional Board of Education, 75 S.L.D. 481; Holmes v. Board of Education of Lower Camden County, 75 S.L.D. 491.

[86] Board of Education of Palmyra v. Hansen, 56 N.J. Super. 567, 153 A.2d 393 (1959).

[87] R.R. v. Board of Education of Shore Regional High School, 109 N.J. Super. 337, 263 A.2d 180 (1970).

[88] N.J.A.C. 6:8-3.8

[89] N.J.A.C. 6:8-3.7

[90] U.S.C. 1401 et. seq.

[91] 20 U.S.C. 1415(e)(3)

[92] 29 U.S.C. 794

[93] See Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978): S-1 v. Turlington, 635 F. 2d 342 (5th Cir.) cert. den. 454 U.S. 1030 (1981).

[94] N.J.A.C. 6:28-1.9. See also N.J.S.A. 46-6, 46-8.

[95] Stuart v. Nappi, 443 F. Supp. 1235 (D.C. Conn. 1978).

[96] Board of Education v. Illinois State Board of Education, 531 F. Supp. 148 (D.C. Ill. 1982).

[97] N.J.A.C. 6:28-2.8(f)

[98] N.J.S.A. 9:17B

[99] N.J.S.A. 9:6-8.10

[100] N.J.S.A. 9:6-8.13

[101] N.J.S.A. 9:6-8.14

[102] N.J.S.A. 18A:40-4.1

[103] N.J.S.A. 18A:35-4a

[104] Piazzila v. Watkins, 316 F. Supp. 624 (M.D. Alan. 1970). See also Picha v. Wielgos, 410 F. Supp. 1214 (N.D. I11.1976).

[105] U.S. Constitution, Amend. V.

[106] N.J.S.A. 18A:11-1

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APPENDICES

A. State Board of Education Resolution
B. How to Find Legal Cases

APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
Adopted September 3, 1980

RESOLUTION

WHEREAS, the board recognizes the importance of an orderly school environment to promote learning and ensure the safety of students and staff, and

WHEREAS, an initial step toward more orderly schools is to make sure that the rules which govern the behavior of students and the staff and parental responsibilities in enforcing these rules are understood, and

WHEREAS, the State Board of Education acknowledges that many districts do have policies regarding student conduct, and commends these districts, now therefore be it

RESOLVED, that the State Board of Education encourages each district board of education without a written policy to develop one including a code of conduct. The policy would concern the rights and responsibilities of pupils with respect to all school related activities, including school sponsored functions or functions at other schools involving approved activities. The State Board urges the development of such policies, by September 1983, with the participation of school staff, pupils and parents or guardians, and be it

RESOLVED, that every district board of education be encouraged to distribute the written policy including the code of conduct in appropriate form at no cost to pupils, staff and parents or guardians at least once every three years and to all new staff, pupils and parents or guardians entering the district, and be it

FURTHER RESOLVED, that the Commissioner of Education shall report to the Board annually on the number of districts which have implemented the provisions of this resolution.

R. Paul Ricci
President, State Board of Education

Fred G. Burke
Secretary, State Board of Education

APPENDIX B

HOW TO FIND LEGAL CASES

School staff may wish to consult the text of a decision on a case cited in this resource guide to supplement the material presented. It is often helpful to read the full text of a particular court opinion or to locate additional cases on a given topic. The following explanations are intended to assist you with that process:

1. The Meaning of a Citation

   Any case which has been adjudicated in a court of law is given a title and reference letters and numbers. These constitute a "citation" and indicate what court decided the case as well as when and where the decision is printed.

   It begins with the name of the case, for example, (Brown V. New Jersey), which should always be underlined or in italics. The first name (in this case "Brown") indicates the plaintiff or appellant - the person who is complaining. This is followed by "v" which stands for versus or against, and then the defendant or appellee - the accused or against whom the complaint is lodged.

   The numbers and abbreviations indicate the reference books and pages on which the case can be found. The first number is the volume number, followed by the abbreviation for the reference book, and then the page number.

2. Examples of Citations

   The following examples provide a guide:

   A. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). The letters "U.S." indicate that this case was decided by the United States Supreme Court and can be found in the United States Reports. From the numbers, it becomes clear that the case is located in Volume 393 of the U.S. Reports at page 503, and that it was decided in 1969.

   B. Richards v. Thurston, 424 F. 2d 1281 (1st. Cir. 1970). This case is found in Volume 424 of the Federal Reporter, Second Series, at page 1281. Cases found in the Federal Reporter ("Fed.") or Federal Reporter, 2nd Series ("F.2d") were decided by the United States Courts of Appeals, of which there are eleven. These courts are one level below the Supreme Court. In this one, the notation within the parentheses indicates the case was decided by the Court of Appeals for the First Circuit in 1970.

C. Hammond v. South Carolina State College, 272 F. Supp. 947 (D.S.C. 1967) The Federal Supplement ("F. Supp.") reports, for the most part, cases from the United States District Courts, of which there are one or more in each state. This case, found in volume 272 of the Federal Supplement at page 947, was decided by the U.S. District Court for the District of South Carolina in 1967.

D. State Board of Education v. Board of Education, Netcong, 57 N.J. 172 (1970). Only decisions of the New Jersey State Supreme Court are reported in the New Jersey Reports. This particular case can be found in volume 57 of the Reports at page 172, and was decided by the State Supreme Court in 1970.

3. Major Sources Regularly Available

In seeking information about a legal topic in which a citation is not known two legal encyclopedias can be helpful: American Jurisprudence (Am. Jur.) and Corpus Juris Secundum (C.J.S.). The second series of American Jurisprudence (Am. Jur. 2nd) is the most current. These encyclopedias, organized alphabetically by subject, provide the reader with general information on particular legal issues and are keyed to the major reference books in which the cases can be found.

A more detailed discussion of a legal topic can be found in a series called American Law Reports (ALR). This work contains selected cases which are followed by an analytical essay. It is, for this reason, an excellent resource for teachers of high school legal education. The ALR and its second and third editions must be used in conjunction with the ALR Digest or the ALR Quick Index. This series makes it possible to research a legal issue by subject and gives references to pertinent cases.

4. Other Sources

Numerous other reference books can be found in law libraries at law schools, in Federal Court Buildings, the State House, and frequently in libraries of large universities that have no law school. They can also be found at county or municipal court houses.

Source: Adapted from John Khanlian, "Turning Students On To Active Citizenship," Approaches To Political/Legal Education: An Implementation Guide For Teachers and Trainers, Institute for Political and Legal Education (Educational Improvement Center, Sewell, N.J., June 1977), p.170.

FEEDBACK FORM

Student Codes of Conduct: A Guide to Policy Review and Code Development

Please rate this document on each of the following points using a scale of 1 (highest rating) to 5 (lowest rating). Your frank evaluation and comments will help us to improve our products.

1. Does the document provide a thorough, useful and objective overview of the legal, social, and educational issues involved in developing board of education policies and school codes regarding student conduct?

   1 2 3 4 5

2. Will this document be helpful as a basic resource to your district in reviewing, developing or revising policies and rules governing student behavior?

   1 2 3 4 5

3. Does the document provide useful advice on how to achieve the kind of cooperation between school and community that is needed to develop and disseminate student codes of conduct?

   1 2 3 4 5

4. Is the document easy to read in regard to style, organization of information, and form?

   1 2 3 4 5

Comments: (Please reference the specific item above by number if relevant to your comment. General comments will also be helpful, of course.)

Return to: New Jersey Department of Education
Division of General Academic Education
Student Behavior and Development Unit
225 West State Street
CN 500
Trenton, New Jersey 08625